IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

TUESDAY, THE 4TH DAY OF AUGUST 2015/13TH SRAVANA, 1937

Crl.Rev.Pet.No. 2872 of 2007 ( )

AGAINST THE JUDGMENT IN CRA 190/2005 of ADDL.DISTRICT COURT, THRISSUR DATED 29-03-2007

AGAINST THE JUDGMENT IN CC 110/2004 of JUDICIAL FIRST CLASS MAGISTRATE, KODUNGALLUR

REVISION PETITIONER/ACCUSED:

ARUNA, W/O. SHANMUGHAN,
VALIPPARAMBIL PADINJATTAYIL HOUSE
EDAMUTTOM P.O. VALAPPAD VILLAGE, CHAVAKKAD TALUK
THRISSUR DT.

BY ADV. SRI.M.SHAJU PURUSHOTHAMAN

RESPONDENT(S)/COMPLAINANT:

1. MANOJ, S/O. KRISHNAN,VALIPPARAMBIL HOUSE
KAZHIMBRAM .P.O. VALAPPAD VILLAGE, CHAVAKKAD TALUK
THRISSUR DT.

2. STATE REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

R, BY ADV. PUBLIC PROSECUTOR SMT SEENA RAMAKRISHNNAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 04-08-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.D.RAJAN, J

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Crl.R.P.No.2872 of 2007

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Dated 4th July, 2015

ORDER

The revision petitioner challenges the judgment of conviction and sentence under Section 138 of N.I.Act in Crl.A.190 of 2005 of First Additional Sessions Judge, Thrissur. The revision petitioner was convicted by the trial court in C.C.No.110 of 2004 and sentenced to imprisonment till rising of court and to pay compensation of Rs.90,000/- with 12% interest.

2. The complainant, who is the first respondent in this case alleges that the revision petitioner borrowed a sum of Rs.90,000/- and in discharge of that debt, he issued Ext.P1 cheque dated 23.12.2003. When the cheque was presented for encashment, it was dishonoured for the reason of funds insufficient. A lawyer notice was given to the revision petitioner and there was no repayment from his side. In the circumstance, first respondent filed a complaint.

3. To prove the offence, revision petitioner was examined as PW1 and Ext.P1 to P6 were marked. Trial court after sifting and weighing the evidence, convicted the revision petitioner and sentenced him.

4. Learned counsel appearing for revision petitioner contended that there is illegality in the judgment passed by the courts below. 12% interest per annum was imposed by the trial court which is illegal. Appellate court reduced 12% interest to 6%. Counsel contended that interest is permissible only in civil proceedings and relied on the decision reported in **Suman Sethi V. Ajay K.Churiwal and another** (AIR 2000 SC 828). Learned Public Prosecutor has no objection.

6. According to Section 138 of the Negotiable Instruments Act, where any cheque drawn by a person on an account maintained by him with a bank for payment of any amount of money to another person from out of that account, for the discharge in whole or in part of any debt or liability, is returned by the bank, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with a bank, such person shall be deemed to have committed an offence under Section 138 of the Negotiable Instruments Act. The cheque has to be presented within the statutory period in which it is drawn or within the period of its validity. Secondly, the payee

or holder in due course of the cheque makes a demand for payment of such amount by giving a notice in writing to the drawer of the cheque within the statutory period on the date of receipt of information from the bank regarding the return of the cheque as unpaid.

7. To prove this, first respondent was examined as PW1, his documents were marked as Ext.P1 to P6. Ext.P1 is the dishonoured cheque, Ext.P2 is the dishonour memo, Ext.P3 is another memo, Ext.P4 is the copy of the lawyer notice and Ext.P5 is the postal receipt. When Ext.P1 was dishonoured for the reason of funds insufficient, a presumption provided under Section 139 of N.I.Act can be drawn in favour of the first respondent. Apex Court in **Mandvi Co-operative Bank Ltd V. Nimesh B Thakore** (AIR 2010 SC 1402) held that a rebuttable presumption is created under Section 139 that cheque was issued by the drawer in discharge of any debt or liability owned by him to its holder. The same principle was followed in **Anil Hada V. Indian Acrylic Ltd** (AIR 2000 SC 145). No rebuttal evidence is available in this case. Therefore the cheque was issued in discharge of a liability and convicted the accused.

8. The learned Magistrate convicted the revision petitioner and sentenced to imprisonment till rising of court and to pay a compensation of Rs.90,000/- with 12% interest per annum from 23.12.2003 till the date of realisation. But the learned Appellate Judge modified the sentence and convicted him till rising of court and to pay a compensation of Rs.90,000/- with 6% interest. It is difficult to grant interest in criminal cases when there is no provision provided in the Statute which was explained by the Apex Court in **Suman Sethi's case** (supra). While discussing the validity of the notice it was observed as follows. "If the cheque amount is paid within the above period or before the complaint is filed the legal liability under S.138 will cease and for recovery of other demands as compensation, costs interest, etc, a civil proceeding will lie". In the light of the above observation of the Apex Court, the sentence imposed on the revision petitioner is modified as follows.

He is sentenced to imprisonment till rising of court and to pay compensation of Rs.90,000/- and in default of payment of compensation, imprisonment for three months. Revision petitioner is directed to appear before trial court and undergo the sentence within one month from today.

P.D.RAJAN, JUDGE

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